



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO CONSOLIDATION COAL COMPANY FOR CONSOLIDATION COAL COMPANY, BUCHANAN PLANT Registration No. 10945

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, - 1316, between the State Air Pollution Control Board and Consolidation Coal Company, regarding Consolidation Coal Company, Buchanan Plant for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permits and the Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. "Consolidation Coal Company" means Consolidation Coal Company, a company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Consolidation Coal Company is a 'person' within the meaning of Va. Code § 10.1 – 1300.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 – 1185.
5. "Facility" means Consolidation Coal Company, Buchanan Plant, located at State Route 632, Garden Creek / Buchanan County, Virginia, which is permitted to operate a coal preparation plant.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means the Title V Federal Operating Permit to operate a coal preparation plant which was issued under the Air Pollution Control Law and the Regulations to Consolidation Coal Company, Buchanan Plant effective January 11, 2008, modified April 7, 2009.
9. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution means 9 VAC 5 chapters 10 through 80.
10. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Consolidation Coal Company owns and operates the Facility in Buchanan County, Virginia. The Facility is a coal preparation plant that takes raw coal from the Buchanan No. 1 deep mine, then cleans and dries the coal prior to placing it into railcars for shipment.
2. The Facility is subject of the Permit which allows the company to operate a coal preparation plant facility.

3. On August 12, 2010, Department staff conducted a Partial Compliance Evaluation of the Facility records for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the review, Department staff made the following observations:
 - a) The Facility improperly located the temperature probe designated to monitor the temperature of the drying bed chamber. The probe should have been located just below the restriction deck; instead it was located in the heat tunnel. A temperature probe was located below the restriction deck, however, it was not equipped with a continuous monitor.
 - b) The Facility failed to notify DEQ within 30 days prior to conducting the required VEE testing on the new coal handling, processing and storage equipment (RCS2 and its associated belts and transfer points). VEE test report was received by DEQ on December 4, 2009 for NSPS equipment Emission Unit ID S009 (Conveyor 1 to Raw Coal Silo), S208 (Transfer Conveyor to Raw Coal Silo #2) and S011 (Raw Coal Silo to Conveyor 4).
4. Condition III.B.5. of the Permit in accordance with 9 VAC 5-50-20 C, 9 VAC 5-50-260, 9 VAC 5-50-410, and 9 VAC 5-80-110 state in part, "The permittee shall monitor, operate, calibrate and maintain the devices listed in Condition III.B.2. of this permit according to the following...The temperature probe monitors the temperature at the entrance to the drying chamber (just below the restriction deck) of the thermal dryer..."
5. Condition IV.E.2. of the Permit in accordance with 9 VAC 5-50-50, 9 VAC 5-80-110 and Condition 17 of the July 30, 2005 permit as amended August 24, 2005, states in part, "The permittee shall furnish written notification to the Director, Southwest Regional Office of the following:...The anticipated date of visible emissions evaluations of the coal handling, processing and storage equipment postmarked at least 30 days prior to such date..."
6. On August 17, 2010, the Facility attached a continuous monitoring device to a temperature probe at the proper location (just below the restriction deck) within the drying chamber.
7. On September 10, 2010, Precision Technologies calibrated the temperature probe located just below the restriction deck of the drying chamber for the Facility.
8. On October 1, 2010, based on the inspection dated August 12, 2010, the Department issued a Notice of Violation No. 9-2-SWRO-2010 to Consolidation Coal Company, Buchanan Plant for the violations described in paragraphs C(3) through C(5), above.

9. On October 4, 2010, Consolidation Coal Company contacted DEQ staff by telephone conversation regarding the NOV.
10. Based on the results of the August 12, 2010 inspection, the October 4, 2010 response to the NOV, the Board concludes that Consolidation Coal Company has violated Condition III.B.5. and Condition IV.E.2. of the Permit, and Condition 17 of the July 30, 2005 permit as amended August 24, 2005 as described in paragraphs C3 through C5, above.
11. Consolidation Coal Company submitted documentation on December 4, 2009 and September 10 and September 27, 2010 that verifies that the violations described in paragraphs C(3) through C(5), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and – 1316, the Board orders Consolidation Coal Company and Consolidation Coal Company agrees to pay a civil charge of \$3,302 within 30 days of the effective date of the Order in settlement of the violations cited in this Order..

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Consolidation Coal Company shall include its Federal Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Consolidation Coal Company for good cause shown by Consolidation Coal Company, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action

authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order

3. For purposes of this Order and subsequent actions with respect to this Order only, Consolidation Coal Company admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Consolidation Coal Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Consolidation Coal Company declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Consolidation Coal Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Consolidation Coal Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Consolidation Coal Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Consolidation Coal Company shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which Consolidation Coal Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Consolidation Coal Company. Nevertheless, Consolidation Coal Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. Consolidation Coal Company petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - b. The Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Consolidation Coal Company.

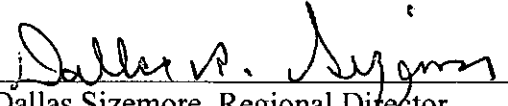
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Consolidation Coal Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Consolidation Coal Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Consolidation Coal Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Consolidation Coal Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Consolidation Coal Company.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Consolidation Coal Company voluntarily agrees to the issuance of this Order.

And it is ORDERED this 16th day of December, 2010


Dallas Sizemore, Regional Director
Department of Environmental Quality

Consolidation Coal Company voluntarily agrees to the issuance of this Order.

Date: 12-14-10 By: Gerald F. Ramsey, Supr. Env. Permitting
Gerald Ramsey, Authorized Agent,
Consolidation Coal Company

Commonwealth of Virginia

City/County of Buchanan

The foregoing document was signed and acknowledged before me this 14th day of
December, 2010 by Gerald F. Ramsey who is
Supr. Env. Permitting of Consolidation Coal Company,
on behalf of the corporation.

Dea K. Neel
Notary Public

244666

Registration No.

My commission expires: May 31, 2012

Notary Seal:

